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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,538	02/06/2004	Vincent L. Vaillancourt		6504

7590 06/04/2007
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EXAMINER

WILLIAMS, CATHERINE SERKE

ART UNIT	PAPER NUMBER
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3763

MAIL DATE	DELIVERY MODE
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06/04/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/773,538
Filing Date: February 06, 2004
Appellant(s): VAILLANCOURT ET AL.

MAILED
MAY 04 2007
GROUP 3700

Francis C. Hand
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/22/07 appealing from the Office action mailed 5/22/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

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(8) Evidence Relied Upon

6,234,999

WEMMERT

5-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wemmert et al (USPN 6,234,999). Wemmert discloses a needle hub, a needle housing (40) with an aperture and a film strip with a series of longitudinally spaced apertures with corrugation therebetween. See figures 2 and 5-6. See also 5:38-41; 3:49-52; 6:28-30; 6:46-50 and 6:60-62. A washer (49) with flaps (49a) is mounted in the needle housing.

Wemmert meets the claim limitations as described above but fails to include the strip being polyester film. At the time of the invention, it would have been obvious to use polyester as the material for the strip. Polyester is a known material in the art and is used extensively in the medical device art. Furthermore, one skilled in the art would know the properties of polyester, i.e. strength, durability, etc. One skilled in the art would have used common knowledge in the art of polyester and recognized its advantages. It would have been incorporated into Wemmert as the strip material for its durability thereby enhancing the performance of the device.

(10) Response to Argument

Appellant argues that the prior art does not read on the claims because (1) Wemmert does not meet the claim language of “said strip is stretched between said hub and said housing to retain said housing connected to said hub under a biasing force” and (2) the washer in Wemmert does not meet the plain meaning definition of the term “washer”. However, one skilled in the art can reasonably conclude that (1) the claim language regarding the strip is broad and appellant is arguing that which is not claimed and (2) the plain definition of the term “washer” is not as relevant in light of appellant’s own use of the term in the instant specification and the use of the term in the art.

1 Appellant argues that the strip of Wemmert is not “stretched” because the tether (44) of Wemmert is under an expanding force and not under a contracting force and if the tether (44) were truly stretched the needle hub would be drawn toward the shield. Since appellant can be their own lexicographer, one skilled in the art first looks to the specification to provide meaning to the terms used in the claims. The term “stretched” is not defined in the specification and the term “stretched” is not even used in the descriptive portion of the specification. While the instant specification does describe the functioning of the strip (110), it is inappropriate to read that entire description into the term stretched since that description is not a definition. It is reasonable to conclude that one skilled in the art, having read the instant specification and knowing the plain meaning of the term stretched, would understand that by “stretched” the strip (110) moves from a folded position (figure 27 of the instant specification) to a more linear position (figures 24 and 25 of the instant specification). This understanding is reasonable

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because it is based on the instant specification. Additionally, since the term stretched is neither defined nor even used in the specification, it is appropriate to limit the term to this meaning and not read more, i.e. the contracting force as argued by appellant into this term.

2 Appellant argues that the washer of Wemmert does not meet the plain meaning of the term washer and; therefore, does not meet the claimed washer. However, one skilled in the art first looks to the specification to provide meaning to the terms used in the claims since appellant can be their own lexicographer. If no meaning is provided in the specification than one looks to the plain meaning for guidance. The specification clearly uses the term washer, reference numbers are used to locate the washer in the drawings and the functioning of the washer is described. Therefore, one must first understand the washer to be that which is described by appellant. Additionally, appellant's washer does not meet the entire plain meaning definition as provided. While the instant washer is a mostly flat thin disk, the definition also states "used in joints or assemblies to ensure tightness, prevent leakage, or relieve friction". This is not how appellant's washer functions. Therefore, it would be reasonable and appropriate for one skilled in the art to defer to the instant specification's description of the washer in searching for and applying prior art to the instant claims. While the instant washer is a flat thin disk, it is not appropriate for one skilled in the art to read into the specification and claims a limiting height for flat. No dimensions are provided in the specification. Additionally, the washer (49) of Wemmert, while thicker than the instant washer, has upper and lower flat portions and functions identically to the instant washer. The only different between the two structures is a difference in height or thickness. Clearly, the washer of Wemmert reads on the claimed washer in light of

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appellant's own description of washer and one skilled in the art should defer to the specification and not the plain meaning.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

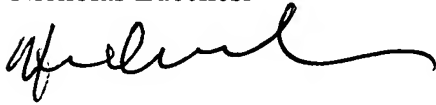
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Catherine S. Williams

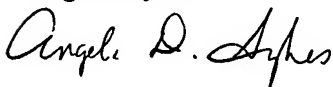
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